

**RULEMAKING HEARING RULES
OF
THE TENNESSEE ETHICS COMMISSION**

**CHAPTER 0580-1-3
RULES PERTAINING TO ADMINISTRATIVE SANCTIONS AND
COMPLAINT PROCEEDINGS OF THE TENNESSEE ETHICS COMMISSION**

NEW RULES

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0580-1-2-.01 PURPOSE AND SCOPE.

These rules are promulgated for the purpose of providing procedures for the processing of complaints, for the assessment of administrative sanctions, and for the conduct of hearings under the jurisdiction of the Tennessee Ethics Commission pursuant to the provisions of Title 3 of Tennessee Code Annotated.

Authority: T.C.A. §§ 3-6-105, 3-6-107, 3-6-301, 3-6-308(a)(10).

0580-1-2-.02 DEFINITIONS.

- (1) Commission. The Tennessee Ethics Commission.
- (2) Executive Director. The Executive Director of the Tennessee Ethics Commission.

Authority: T.C.A. § 3-6-107(1).

0580-1-3-.03 RECEIPT AND INVESTIGATION OF COMPLAINTS.

- (1) Complaints shall be received by the Commission or initiated upon the Commission's own vote in accordance with the provisions of T.C.A. § 3-6-201.
- (2) Complaint proceedings and records relating to a preliminary investigation shall be kept confidential by Commission staff and Commission members in accordance with the requirements contained in T.C.A. §3-6-202.
- (3) Upon receipt of the complaint, the Commission's General Counsel or designee shall determine, in accordance with the provisions of T.C.A. §3-6-203, whether the complaint is legally sufficient and alleges violations of laws which are within the jurisdiction of the Commission to enforce.
 - (a) If the complaint alleges violations of the laws that are within the jurisdiction of the Registry of Election Finance, the Commission's General Counsel or designee shall refer the complaint to the Registry of Election Finance and provide notice of such referral to the alleged violator and to the complainant in accordance with the requirements of T.C.A. §§ 3-6-201(f) and 3-6-203(a).
 - (b) If the Commission's General Counsel or designee determines the complaint to be legally insufficient, or to otherwise allege no violations of laws that are within the jurisdiction of

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the Commission, the Executive Director shall dismiss the complaint and provide notice thereof to the alleged violator and to the complainant, in accordance with the requirements of T.C.A. §§ 3-6-201(f) and 3-6-203(a).

- (c) If the Commission's General Counsel or designee determines the complaint to be legally sufficient and to otherwise allege violations of laws that are within the Commission's jurisdiction, the Executive Director shall provide notice thereof to the alleged violator and to the complainant, in accordance with the requirements of T.C.A. §§ 3-6-201(f) and shall refer the complaint to the Office of the Attorney General & Reporter for investigation, in accordance with the requirements of T.C.A. § 3-6-203(b); provided, however, that complaints against a candidate in any election shall be processed in accordance with the procedures set forth in T.C.A. § 3-6-201(e).

Authority: T.C.A. §§ 3-6-201 through 3-6-203.

0580-1-3-.04 INFORMAL PROBABLE CAUSE HEARINGS.

- (1) Upon receipt of the findings of the Office of the Attorney General & Reporter, the Executive Director shall schedule an informal probable cause hearing on the agenda of the Commission's next regularly scheduled public meeting; provided, however, that if the next regularly scheduled public meeting will occur prior to the complainant and alleged violator receiving notice of the informal probable cause hearing pursuant to paragraph (2) below, the Executive Director shall schedule the informal probable cause hearing on the agenda of the next regularly scheduled public meeting occurring after the receipt of such notice.
 - (a) The public notice of such meeting shall state that the informal probable cause hearing is for the purpose of presenting findings of a complaint investigation and shall not be open to public observation, pursuant to the requirements contained in T.C.A. § 3-6-202.
 - (b) The informal probable cause hearing referenced in this section shall not be required to be held pursuant to the contested case provisions of T.C.A. §4-5-301 *et seq.*
- (2) Upon scheduling the informal probable cause hearing, the Executive Director or designee shall provide to both the complainant and the alleged violator, via certified, return receipt requested and first class mail, notice that includes the following:
 - (a) a copy of the findings of the Office of the Attorney General & Reporter;
 - (b) the date, time and location of the informal probable cause hearing; and
 - (b) the opportunity to choose one (1) of the following options:
 - 1. Appear personally or through an attorney or other authorized representative to present an oral statement and any written documents relevant to the probable cause determination; or
 - 2. Appear by sworn, notarized statement, including any pertinent attachments, to present evidence relevant to the probable cause determination.
- (3) A complainant or alleged violator wishing to personally appear at the informal probable cause hearing must submit to the Commission office written notice of such appearance no later than ten (10) days prior to the scheduled hearing. If the complainant or alleged violator will appear through an attorney or other authorized representative, such notice to the Commission must additionally include the name and contact information of the attorney or other authorized representative.

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- (4) A complainant or alleged violator wishing to appear by sworn notarized statement must submit the statement and any accompanying documentation to the Commission office no later than ten (10) days prior to the scheduled informal probable cause hearing.
- (5) Individual Commission members or the Commission's General Counsel may, as deemed appropriate by the Commission Chair or Vice-Chair, question the individual presenting oral or written evidence.
- (6) The Commission may limit the presentation of the oral statement or the submission of written documents if the Commission determines such evidence to be duplicative of evidence already submitted or irrelevant to the factual or legal questions pending before the Commission.
- (7) In the event that the Commission determines no probable cause exists to believe a violation of any law or rule administered and enforced by the Commission has occurred, the Commission shall dismiss the complaint by issuing a written report to the complainant and alleged violator which states with particularity the Commission's reason for dismissal of the complaint.
 - (a) The Commission's report finding no probable cause shall additionally inform the complainant of the opportunity to request a public probable cause hearing by submitting such request in writing to the Commission office no later than ten (10) business days from receipt of the Commission's report.
 - (b) Upon receipt of a written request from the complainant, the Executive Director shall schedule a public probable cause hearing in accordance with the procedures provided in the next section, 0580-1-3-.05.

Authority: *T.C.A. §§ 3-6-201 through 3-6-203.*

0580-1-3-.05 PUBLIC COMPLAINT HEARINGS

- (1) In the event that the Commission determines that probable cause exists to believe that a violation of a law or rule administered and enforced by the Commission has occurred, or in the event that a complainant has submitted a request pursuant to the previous section 0580-1-3-.04(5), the Executive Director shall schedule a public contested case hearing which shall be conducted by an Administrative Law Judge assigned by the office of the Secretary of State in the presence of a minimum of four (4) Commission members pursuant to the provisions of the Administrative Procedures Act in Title 4, Chapter 5, Part 3, of the Tennessee Code Annotated; further, Commission staff shall provide for a record of the proceedings to be maintained as required by T.C.A. § 4-5-319.
- (2) The Executive Director or designee shall provide notice of the hearing to the complainant and alleged violator as required by T.C.A. § 4-5-307. In the event that the alleged violator is a member of the general assembly, the Executive Director shall additionally provide this notice to the ethics committee of the appropriate house pursuant to T.C.A. § 3-6-203(b)(2).
- (3) The Executive Director shall post public notice of such hearing in the same manner as public notices of regularly scheduled Commission hearings are posted.
- (4) Any party may be represented by counsel of the party's choice. The Commission shall be represented by its General Counsel or designee.
- (5) Hearing testimony may be taken by telephone in a manner that allows all parties present to hear the testimony, if approved by the hearing official.

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- (6) The Executive Director may, on behalf of the Commission or at the request of the alleged violator, issue subpoenas and assess fees related thereto in accordance with the provisions of T.C.A. § 3-6-204.
- (7) Findings of the Commission regarding whether or not the alleged violation occurred shall be based upon a majority vote of the Commission members present and shall be based upon a preponderance of the evidence.
- (8) An order of the Commission shall include:
 - (a) Findings of fact and conclusions of law for all aspects of the order and reference to, as appropriate, any exhibits entered in the case; and
 - (b) A statement of the available procedures and the time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order pursuant to T.C.A. § 3-6-204(b). An initial order or decision shall include a statement of any circumstances under which the initial order or decision may, without further notice, become a final order.
- (9) In the event that the Commission finds that the accused violated any law or rule administered and enforced by the Commission, the Commission shall issue an initial order which includes the information required by paragraph (8)(a) above, but which reserves a decision on the imposition of any administrative actions until the Commission's next regularly scheduled Commission meeting. This initial order shall additionally inform the violator of:
 - (a) The date, time and location of the next regularly scheduled Commission meeting in which Commissioners will vote on what, if any, administrative sanctions to impose;
 - (b) The violator's right to submit to the Commission, within fifteen (15) business days of entry of the initial order, any written documentation the violator wishes the Commission to consider when determining what, if any, administrative sanctions to impose on the violator.
- (10) The Commission or Administrative Law Judge shall designate the party responsible for preparing an order. Commission orders shall be signed by the Commission's Chair, or by the Vice-Chair in the absence or inability of the Chair to act. The Commission's General Counsel or designee shall file the order with the Administrative Procedures Division in the Office of the Secretary of State within five (5) business days following signature by the appropriate Chair. Copies of the signed orders shall be provided by Commission staff to all parties.

Authority: T.C.A. §§ 4-5-301 et seq.; T.C.A. §§ 3-6-203 through 3-6-204.

0580-1-3-.06 INFORMAL SHOW CAUSE HEARINGS.

- (1) When the Commission is considering issuing civil penalties or other administrative sanction as provided for in T.C.A. §3-6-306(b) as a result of a finding in a complaint proceeding the notice and hearing procedures set forth in the previous section .05 shall be followed instead of the following procedures contained in this section 0580-1-3-.06.
- (2) When the Commission's General Counsel or designee determine that an individual or entity within the jurisdiction of the Commission has violated a law or rule administered and enforced by the Commission, the Executive Director shall provide notice via certified, return receipt requested and first class mail that informs the alleged violator of the:
 - (a) Specific allegations, including citation to the specific law or rules violated;

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- (b) Maximum administrative sanctions possible, including citation to the specific law or rules authorizing the sanction;
- (c) Date, time and location of the next regularly scheduled meeting in which the Commission will consider the imposition of such administrative sanctions; and
- (d) Opportunity to choose one (1) of the following options:
 - 1. Appear personally or through an attorney or other authorized representative to show cause why administrative sanctions should not be imposed, or why the maximum administrative sanctions available should not be imposed; or
 - 2. Appear by sworn, notarized statement, including any pertinent attachments, to show cause why administrative sanctions should not be imposed, or why the maximum administrative sanctions available should not be imposed.
- (3) An individual wishing to personally appear at the informal show cause hearing must submit to the Commission office written notice of such appearance no later than ten (10) days prior to the scheduled hearing. If the individual will appear through an attorney or other authorized representative, such notice to the Commission must additionally include the name and contact information of the attorney or other authorized representative.
- (4) An individual wishing to appear by sworn notarized statement must submit the statement and any accompanying documentation to the Commission office no later than ten (10) days prior to the scheduled informal show cause hearing.
- (5) Individual Commission members or the Commission's General Counsel may, as deemed appropriate by the Commission Chair or Vice-Chair, question the individual presenting oral or written evidence.
- (6) The Commission may limit the presentation of the oral statement or the submission of written documents if the Commission determines such evidence to be duplicative of evidence already submitted or irrelevant to the factual or legal questions pending before the Commission.
- (7) The informal show cause hearing referenced in this section shall not be required to be held pursuant to the contested case provisions of T.C.A. § 4-5-301 *et seq.*

Authority: T.C.A. §§ 4-5-301 *et seq.*; T.C.A. §§ 3-6-205; 3-6-306.

0580-1-3-.07 ISSUANCE, RECONSIDERATION AND APPEAL OF ORDERS ASSESSING ADMINISTRATIVE SANCTIONS

- (1) Upon a majority affirmative vote by the Commission members present, an order assessing civil penalties or an order assessing the administrative sanction provided for in T.C.A. § 3-6-306(b) shall be issued. The Chair of the Commission or the Executive Director shall have the authority to issue the order on behalf of the Commission, and Commission staff shall serve the order by mailing it certified mail return receipt requested or first class mail.
- (2) The order shall include notice to the individual or authorized representative named in the order that:
 - (a) A request for reconsideration of the order may be submitted in writing to the Commission within fourteen (14) days from the date of the issuance of the order.

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- (i) Such written request must include additional information concerning the matter that was not available for the Commission's consideration at the meeting in which the order was issued.
 - (ii) Written requests for reconsideration which fail to include the additional information referenced in paragraph (i) above will be dismissed without further consideration by the Commission.
 - (b) The order may be appealed within thirty (30) days from the date of the issuance of the order pursuant to the procedures provided for under the Uniform Administrative Procedures Act, T.C.A. §4-5-301, *et seq.*;
 - (c) If the order assesses civil penalties, such penalties must be paid in full to the Commission within thirty (30) days from the date of the issuance of the order unless a request for reconsideration or appeal is submitted pursuant to subparagraphs (a) and (b) above.
- (3) If an order mailed by certified mail is returned from the United States Postal Service as unclaimed, the order shall be reissued and mailed by Commission staff via overnight mail delivery. The individual or authorized representative to whom the order is issued shall have thirty (30) days from the date of the reissuance of the order to request reconsideration, appeal, or pay assessed fines in accordance with subparagraphs (a) through (c) above.
- (4) Requests for Reconsideration. While a request for reconsideration of an order is pending, the order shall not become final. Upon an affirmative Commission vote denying a request for reconsideration, an order shall be issued which denies the request and allows the individual or authorized representative named in the order ten (10) days after the date of the issuance of the order to appeal the original assessment order under the Tennessee Administrative Procedures Act. If not appealed the order becomes a final order.
- (5) Appeals. Orders shall be appealed by filing a petition with the Commission, which shall be considered a request for a contested case hearing pursuant to the Uniform Administrative Procedures Act, T.C.A. §4-5-301, *et seq.*
- (6) If the Commission's order is not appealed within thirty (30) days of its issuance, the order becomes a final order.
- (7) If an order assessing monetary sanctions becomes final without the individual or entity named in the order taking action to request reconsideration, appeal or to pay in full the amount assessed, upon the order becoming final Commission staff shall forward the matter to the Office of the Attorney General & Reporter for collection and other appropriate legal action pursuant to T.C.A. § 3-6-206 and other applicable law.

Authority: T.C.A. §§ 2-10-207(1), 3-6-103(a)(9), 3-6-110, and 3-6-206.